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Supreme Court of the United States.

OCTOBER TERM, 1944.

SAMUEL SANDBERG ET AL.,
Petitioners,

v.

NEW ENGLAND NOVELTY CO., INC.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF THE STATE OF MASSA-
CHUSETTS FOR THE COUNTY OF WORCESTER
AND
BRIEF IN SUPPORT THEREOF.

SIDNEY S. GRANT,
Attorney for the Petitioner.

SAMUEL E. ANGOFF,
HAROLD B. ROITMAN,
Of Counsel.

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NEW ENGLAND NOVELTY CO., INC.

PETITION FOR WRIT OF CERTIORARI.

Summary Statement of the Matter Involved.

This action arose on a petition for contempt of court brought in the Superior Court of the Commonwealth of Massachusetts for the County of Worcester by the respondents herein against the petitioners for violation of the terms of an injunction. The trial was held before a jury and a verdict was rendered in favor of the respondents herein. Some of the petitioners were given jail sentences, others were fined. Exceptions were taken by the petitioners and their bill of exceptions was heard by the Massachusetts Supreme Judicial Court, which overruled these exceptions. Mass. Advance Sheets (1944) 433. The principal questions involved in this bill of exceptions were the failure of the trial judge to grant the petitioners' motion for a directed verdict and motion to dismiss, the failure to instruct the jury properly regarding the constitutional rights of the petitioners under the Fourteenth

Amendment of the United States Constitution, and the failure to interpret properly the terms of the injunction in accordance with the constitutional rights of the petitioners. These questions were decided by the Massachusetts Supreme Judicial Court and materially affected its decision overruling the exceptions.

New England Novelty Co., Inc., v. Samuel Sandberg et als., Mass. Advance Sheets (1944) 433, at 441, 443, appended to the Record.

The issue involved is whether a state court in a labor dispute involving peaceful picketing may restrict freedom of speech, press, and assembly by contempt proceedings under an injunctive decree.

The respondents herein brought a bill in equity seeking a restraining order against certain named members of a voluntary unincorporated trade union association. A preliminary injunction was issued by Donnelly, J., at the Superior Court in Worcester on October 22, 1941. This injunction is set out in full (Record, pp. 30-31). The pertinent provisions are as follows:

“Said defendants and each of them are hereby enjoined and restrained from:

“1. Maintaining over two pickets at any time at each of the entrances used by employees going to and from the premises of each of said companies onto the main highway, said entrances being as follows:

“(a) joint entrance for employees of the New England Novelty Company and Commonwealth Plastic Company on Adams St. in said Leominster, at which entrance two pickets will be stationed; (b) joint entrances for employees of the New England Novelty Company and Commonwealth Plastic Company on Cotton St. in said Leominster, at which two pickets will

be stationed; (c) entrance for employees of New England Novelty Company on said Adams St. beyond Cotton St., at which two pickets will be stationed.

"2. Molesting, intimidating or threatening or preventing any person from going to and from the premises of said New England Novelty Company or Commonwealth Plastic Company.

"3. Congregating on either Adams St. or Cotton St. in said Leominster, or unlawfully congregating on any private property on said streets.

"4. Attempting to threaten, molest, intimidate, assault or injure any of the employees of either the New England Novelty Company or the Commonwealth Plastic Company, either at their homes or on any public street or thoroughfare or any other place.

"5. Attempting to interfere with in any manner whatsoever or preventing any person who is either now employed by said companies or who desires to enter the employ of said companies from doing so.

"6. There is no attempt hereby to limit the statutory or constitutional rights of either party to peacefully persuade or exercise their rights of free speech and of free press."

The petitioners did not apply for a review of this injunction under G.L. (Ter. Ed.) c. 214, sec. 9A, since they relied upon paragraph 6 of the injunction to protect their constitutional rights.

Thereafter, on October 25, 1941, the respondents herein had each of the petitioners herein served with a petition for attachment for contempt (Record, pp. 31-34). This petition set forth the first five paragraphs of the preliminary injunction, but not the sixth, which was the paragraph expressly limiting the scope and effect of all prior paragraphs. In accordance with the provisions of the Massa-

chusetts General Laws (Ter. Ed.) c. 220, sec. 13A, the case was tried to a jury before Brogna, J.

The evidence showed that the scene of the picketing was a building housing two companies. One, the respondent herein, the New England Novelty Co., Inc., and the other, the Commonwealth Plastic Company. A strike was in progress against both of these companies. This building was surrounded by a wire fence containing two entrances. In accordance with the first provision of the injunction two pickets were stationed at each of these entrances.

On several occasions after the issuance of the preliminary injunction, a group of men, usually about twenty in number, would march back and forth two or three abreast along the streets, from a point some distance away from an entrance to a point near an entrance. The marchers always conducted themselves in a peaceful way without any violence (Record, pp. 20-23). Mass. Advance Sheets (1944) 433, 442.

The petitioner Samuel Sandberg had issued instructions to the pickets and assumed responsibility for what had been done. He had warned the marchers against violence and had warned them not to approach within fifteen feet of each gate. These instructions were issued after consultation with the Mayor and City Solicitor of Leominster, who shared his belief that such actions did not constitute a violation of the injunction (Record, pp. 11, 12).

The petitioners filed a motion for a directed verdict and a motion to dismiss (Record, p. 36) based on the rights guaranteed to them by the Fourteenth Amendment to the United States Constitution. These motions were denied.

The petitioners submitted seventeen requests for rulings (Record, pp. 37, 38) and excepted to the failure or refusal of the judge to grant these requests. Requests for rulings numbered 7 through 9 were specifically based on the petitioners' rights under the Fourteenth Amendment of the

United States Constitution. The petitioners also filed exceptions to the trial judge's charge to the jury, particularly to that portion of the charge defining peaceful picketing.

The petitioners' bill of exceptions to the Massachusetts Supreme Judicial Court was based on the judge's failure to grant these motions and these rulings and brought the constitutional issue directly before the Massachusetts Supreme Judicial Court. The Supreme Judicial Court of Massachusetts overruled these exceptions. Mass. Advance Sheets (1944) 433, appended to the Record herein.

Jurisdictional Statement.

It is contended that the United States Supreme Court has jurisdiction to review the matter here in question. The federal constitutional issues were properly raised by the petitioners' motion for a directed verdict, motion to dismiss and request for rulings. The decision of the Massachusetts Supreme Judicial Court shows that a federal issue was presented and decided. Mass. Advance Sheets (1944) 433, at 441 and 443. This is a final judgment by the highest court in the state.

Question Presented

The question presented to this court is whether the judgment for contempt under the injunction involved herein deprived the petitioners of their rights of free speech in violation of the constitutional guaranties under the Fourteenth Amendment of the United States Constitution.

This question presents the following issue:

Where peaceful picketing is carried on at the employer's place of business, may the pickets be punished for contempt

for violation of an injunction which sets forth as one of its terms that "there is no attempt hereby to limit the statutory or constitutional rights of either party to peacefully persuade or exercise their rights of free speech and free press"?

The following additional issues are also raised:

A. Can any injunction operate to prevent future peaceful picketing?

B. Is it a violation of the Federal Constitution to convict persons for contempt for violation of an injunction which is vague, uncertain and contradictory in its terms?

Reasons Relied upon for the Allowance of the Writ.

The substantial question which presents itself relates to the scope of state judicial censorship upon the rights of free speech, free assembly and free press guaranteed by the Federal Constitution; *i.e.*, whether the state courts, in interpreting their own injunctions, may establish standards prescribing and limiting the operation of federal guaranties of free speech, free press and assembly. It presents the issue as to whether the state courts may establish standards and enforce them by contempt procedure defining and limiting the operation of federal constitutional guaranties.

This case involves the question of whether certain persons doing peaceful acts in groups of moderate size can be found in contempt of the injunction set forth *supra*, p. 2, which specifically guarantees their federal rights by stating:

"6. There is no attempt hereby to limit the statutory or constitutional rights of either party to peacefully persuade or exercise their rights of free speech and of free press."

This court has previously stated that these constitutional rights are immune from either statutory or injunctive interference by the states.

Thornhill v. Alabama, 310 U.S. 88.

Carlson v. California, 310 U.S. 106.

American Federation of Labor v. Swing, 312 U.S. 321.

Hague v. C.I.O., 307 U.S. 496.

Under the decision of the Massachusetts courts, these petitioners were caught in a dragnet of vague and indefinite boundaries which effectively curtailed their constitutional rights.

Carlson v. California, 310 U.S. 106.

Schneider v. State, 308 U.S. 147.

The issue is presented as to whether a state court in enforcing its contempt powers can apply different standards from those established by this court in interpreting these guaranties of freedom provided in the Federal Constitution.

Bridges v. California, 314 U.S. 252.

The injunction in this case could not be attacked directly on federal grounds since it specifically reserved these rights under section 6 of the preliminary injunction. Therefore the question is whether state courts can negate the effect of federal guaranties, as preserved and defined in recent cases by this court, by the indirect process of enforcing its contempt powers under vague standards contrary to those defined by this court. An analysis of this injunction as finally interpreted by the Massachusetts courts shows that it imposed material restrictions upon

freedom of speech. Previous decisions of this court have barred the use of such restrictions when the attempt was made to impose them by statutes, municipal ordinances and injunctions. A decision in this case should determine whether such power may be exercised by a state court indirectly through enforcement of its own injunction decree by the contempt process, especially where the injunction order is on its face couched in language which protects it from direct attack on constitutional grounds. This court anticipated the situation that has arisen in this case in *Milk Wagon Drivers v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, at 298, where it stated:

“If an appropriate injunction were put to abnormal uses in its enforcement, so that encroachments were made on free discussion outside the limits of violence, . . . the doors of this Court are always open.”

Therefore the petitioners respectfully petition this court for a writ of certiorari to the Superior Court of the State of Massachusetts for the County of Worcester.

Respectfully submitted,

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